and, in my judgment, the time spent by an offender (that is a convicted accused) in prison must, unless an order staying execution has been made, be treated as, and be, part of his term of imprisonment. In this case therefore, the appellants' sentences will run in each case from the 9th day of November, 1963.

Appeals dismissed.

Solicitors: *Yong & Wong.*

SEETHAPATHY v. SINGAPORE HARBOUR BOARD STAFF ASSOCIATION & ORS.

[O.C.J. (Chua J.) February 10, 1964]
[Singapore — Suit No. 1552 of 1962]

Trade union—Rules and Constitution—Non-compliance with—Effect of—Whether acts ultra vires—Cancellation of registration—Whether declarations and injunction would lie against members of executive council—Trade Unions Ordinance (Cap. 154), s. 18(c) & (d).

The constitution of the defendant association, a registered trade union, required the holding of an annual general meeting as soon as may be convenient after the close of the financial year on March 31 each year. The other relevant rules are as follows:

"8 (b) The business of the Annual General Meeting shall be to consider and decide the internal questions of policy affecting the general industrial and social welfare of the members; to receive reports from the General Secretary, Treasurer and the Executive Council, and receive the Ballot Scrutineers' report on the ballot taken for the election of office-bearers of the Executive Council, Internal Auditors and Trustees.

(c) The General Secretary shall then prepare and forward to all members not less than 1 week before the date fixed for the meeting a notice and agenda of the meeting.

10 (b) ....The General Secretary who shall be the full time official of the Association shall be appointed by the remaining elected members of the Executive Council under conditions that may be decided upon by them. His duties shall be controlled and supervised by the Executive Council.

(g) The Executive Council shall give instructions to the Secretary, other officers and paid staff for the conduct of the Association. It may appoint such staff as it may consider necessary. It may suspend or dismiss any officer or member of the staff for neglect of duty, dishonesty, incompetence, refusal to carry out the decisions of the Executive Council or for any other reason which it deems good and sufficient in the interests of the Union.

15 (a) Voting shall be by secret ballot of the whole membership of the Association in respect of the election of office-bearers.

(d) The Executive Council shall take such steps to see that the following procedures governing secret ballot are complied with:

(i) That each member entitled to vote is issued with a ballot paper together with an envelope addressed to the General Secretary for the return of the ballot."

No annual general meetings were held in 1959, 1960 and 1961. In 1962 the then executive council fixed November 14, 1962 as the day for the annual general meeting and for the election of office bearers and on the said day the 2nd defendants (declared to be elected unopposed) and the 3rd defendants (declared to be elected by vote) were declared elected to the executive council.

The plaintiff, a member of the association commenced proceedings for declarations that the purported annual general meeting held on November 14, 1962 was invalid, that the purported election of the 2nd and 3rd defendants was null and void and that the 4th defendant, the general secretary, had no power to act in that capacity. The plaintiff also sought an injunction against the 2nd, 3rd and 4th defendants to restrain them from acting in their respective capacities. Counsel for the defendants submitted that the failure to hold annual general meetings and election of members to the executive council was not *ultra vires;* that the appointment of general secretary was a permanent appointment as provided in rule 10(g) and he could only be dismissed under that rule; that Court should not grant the declarations and injunction sought by the plaintiff on the ground that the matter was of purely academic interest after July 22, 1963 as the certificate of registration of the association had been cancelled and an injunction if granted could not be enforced. It was also submitted to the Court that the annual general meeting held on November 14, 1962 was invalid because no notice of the meeting had been forwarded to all members and the meeting did not receive the reports as required under rule 8(b) and further that rule 15 had not been complied with because ballot papers together with the envelopes addressed to the general secretary were not sent to every member.

Held: (1) the association in not holding annual general meetings and election of members to the executive council in 1959 to 1961 was acting in direct contravention of rules 8 and 10(b) and such conduct was not a mere irregularity but a matter of substance;

(2) it was absolutely illegal for the executive council to carry on and manage the affairs of the association from 1959 to 1962 and therefore the annual general meeting held on November 14, 1962 was invalid and the election held on the same day null and void;

(3) the meaning and effect of rule 10(b) was that the general secretary was to be appointed annually by the elected members of the executive council who themselves were to be elected annually;

(4) this matter was not of purely academic interest and in view of section 18(c) and (d) of the Trade Unions Ordinance the plaintiff should be granted the declarations and injunction;

(5) there had been a flagrant breach of rule 8(b) and (c) which breach was *ultra vires* the rules;

(6) the defendants contravened rule 15(d)(i) and the failure to observe this rule was *ultra vires* the executive council.

Cases cited in argument:—

In Re Durham Miners Assn., Watson v. *Cann* (1900), 17 T.L.R. 39; *Royal Mutual Benefit Building Socy.* v. *Sharman* [1963] 1 W.L.R. 584; *Brodie* v. *Bevan,* (1921-22), 38 T.L.R. 172; *Ashbury Railway Carriage & Iron Co.* (1874-75) L.R. 7 H.L. 653; *Towers* v. *African Trading Co.* [1904] 1 Ch. 567; *Cotter* v. *National Union of Seamen* [1929] 2 Ch. 58, C.A. *Edwards* v. *Gulliver & Co.* [1950] 2 All E.R. 106; *Amalgamated Socy. of Engineers* v. *Jones* (1912-13) 29 T.L.R. 484; *Foss* v. *Harbottle* (1843), 2 Hare 461; *Howard* v. *Prickfood Tool Co. Ltd.* [1951] 1 K.B. 417; *Maerkle* v. *British & Continental Fur Co. Ltd.* [1954] 3 All E.R. 54.

SUIT.

M. Coomaraswamy for the plaintiff.

T. T. Rajah for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiff in this case is a member of the Singapore Harbour Board Staff

Association, (hereinafter referred to as the association), a trade union registered under the provisions of the Trade Unions Ordinance (Cap. 154). He sued (1) the association (2) the members of the executive council of the association declared to be elected unopposed at the election held in November 1962 (3) the members of the executive council of the association declared to be elected by vote at the election held in November 1962 and (4) Jamit Singh, the general secretary of the association. He brought the action for the purpose of obtaining (1) a declaration that the annual general meeting of the association held on the 14th November 1962 was invalid; (2) a declaration that the election of the 2nd defendants was null and void; (3) a declaration that the election of the 3rd defendants was null and void; (4) a declaration that Jamit Singh has no power to act as general secretary; and (5) an injunction to restrain the 2nd defendants, the 3rd defendants and Jamit Singh from acting in their respective capacities as members of the executive council.

The constitution, rules and objects of the association are contained in the Rules and Constitution 1951, as subsequently amended from time to time (hereinafter referred to as the constitution).

Rules 8 and 12 of the constitution provide for the holding of an annual general meeting every year as soon as may be convenient after the close of the financial year on the 31st March of each year.

By rules 10(a) and 10(b) the management of the association is vested in the executive council consisting of one president, three vice-presidents, one general secretary, three other officials and eleven members. Rule 10(b) provides for the election of the members of the executive council, except the general secretary, at the annual general meeting. The rule further provides as follows:

"The General Secretary who shall be the full time official of the Association shall be appointed by the remaining elected members of the Executive Council under conditions that may be decided upon by them. His duties shall be controlled and supervised by the Executive Council."

The following facts are not in dispute. Rule 10(b) was amended in 1954 by abolishing the post of honorary secretary and substituting the post of general secretary and in that year Jamit Singh was elected by the members of the executive council to be the general secretary and he continued to act as general secretary until his detention by the Government in March, 1963. In 1958 the annual general meeting and the election of members to the executive council were held. In 1959 no annual general meeting and no election of members to the executive council were held. A general meeting of the association, however, was held in 1959 and approval was obtained from the members attending the meeting for the members of the old executive council, with a few changes, to remain in office and to manage the affairs of the association. No annual general meeting and no election of members to the executive council were held in 1960 and 1961 but the approval of the members attending a general meeting was obtained for the old executive council to remain in office and to manage the affairs of the association. In 1962 the then executive council fixed the 14th November as the day for the annual general meeting and for the election of members to the executive council. Voting took place on the 14th November followed by the annual general meeting. The 2nd defendants and the 3rd defendants were declared elected to the executive council. In December, 1962, the plaintiff commenced the present proceedings. Before this case came on for hearing the Registrar of Trade Unions cancelled the certificate of registration of the association on 22nd July, 1963.

Counsel for the defendants, while conceding that normally the failure to observe rule 8 and rule 10(b) was *ultra vires*, submitted that in the circumstances of this case the failure to hold the annual general meeting and election of members to the executive council was not *ultra vires* for the following reasons:

(1) the members of the association had approved it at a general meeting;

(2) the Registrar of Trade Unions and the Government were aware of this state of affairs and had taken no action;

(3) there was no complaint by any member;

(4) the association was recognised by the Singapore Harbour Board.

The association in not holding an annual general meeting and an election of members to the executive council in 1959, 1960 and 1961 was acting in direct contravention of rules 8 and 10(b) and such conduct was not a mere irregularity but was a matter of substance and I have no doubt that the failure to hold the annual general meeting and the election was *ultra vires* the association and no amount of assent of the members or the failure of the Government and Registrar of Trade Unions to take action or the failure of any member to complain or the recognition of the association by the Singapore Harbour Board would validate it or convert it into something *intra vires*. Once *ultra vires* always *ultra vires*. In my view it was absolutely illegal for the executive council of 1958 to carry on and manage the affairs of the association in 1959, 1960, 1961 and 1962. It follows therefore that the annual general meeting held on the 14th November, 1962, was invalid and the election held on the same day was null and void.

It is submitted on behalf of Jamit Singh that the constitution does not provide for the annual appointment of the general secretary and that his appointment as general secretary in 1954 was a permanent appointment and that he remains the general secretary until the executive council dismisses him under rule 10(g).

Rule 10(g) provides as follows:

"The Executive Council shall give instructions to the Secretary, other officers and paid staff for the conduct of the Association. It may appoint such staff as it may consider necessary. It may suspend or dismiss any officer or member of the staff for neglect of duty, dishonesty, incompetence, refusal to carry out the decisions of the Executive Council or for any other reason which it deems good and sufficient in the interests of the Union."

There is no dispute that Jamit Singh was appointed the general secretary of the association under the provisions of rule 10(b), which I have already set out. The language in rule 10(b) is quite clear and I have no doubt that the meaning and effect is that the general secretary is to be appointed annually by the elected members of the executive council who themselves are elected annually.

The defendants urged the Court not to grant the declarations and injunction sought by the plaintiff on the ground that this matter is now purely of academic interest.

The defendants submitted that as the certificate of registration of the association had been cancelled by the Registrar of Trade Unions, by virtue of section 18 of the Trade Unions Ordinance, the association was deemed to be an unlawful association and had ceased to exist and the officers of the association could not now take part in its management and any declaration made would be purely academic and any injunction granted could not be enforced.

I am unable to agree with this submission. It seems to me that this matter is not purely of academic interest and an injunction granted would be effective. Section 18 of the Trade Unions Ordinance sets out the consequences of the cancellation of registration. Paragraph (c) provides that "the trade union shall be dissolved and its funds shall be disposed of in accordance with the rules of the union", and paragraph (d) provides that "no person shall, except for the purposes of defending proceedings against the union or dissolving the union and disposing of its funds in accordance with the rules, take any part in its management or organisation, or act or purport to act on behalf of the union or as an officer of the union". It is clear that the officers of the association are not totally prohibited from acting, they can defend proceedings and can act to dissolve the association and to dispose of the association's funds.

For the reasons that I have given I am of the view that the plaintiff should be granted the declarations and the injunction which he seeks.

That disposes of the case but counsel have addressed me at length on the other complaints of the plaintiff and I feel that I should deal with those complaints where the facts are not disputed.

The plaintiff alleged that the annual general meeting held by the association on the 14th November, 1962, was invalid on the grounds, *inter alia:*

(1) that the notice of the meeting was not forwarded to all the members and

(2) that the meeting did not receive the reports of the general secretary, treasurer, executive council, auditor and trustees.

Rules 8(b) and 8(c) provide as follows:

8 (b) "The business of the Annual General Meeting shall be to consider and decide the internal questions of policy affecting the general industrial and social welfare of the members; to receive reports from the General Secretary, Treasurer and the Executive Council, and receive the Ballot Scrutineers' report on the ballot taken for the election of office-bearers of the Executive Council, Internal Auditors and Trustees."

8 (c) "The General Secretary shall then prepare and forward to all members not less than 1 week before the date fixed for the meeting a notice and agenda of the meeting."

Now, the defendants admitted that no written report of any kind was submitted to the meeting. Jamit Singh in his evidence said that the president of the association and he spoke at length at the meeting and it was explained to the meeting that the reports were not given to the members because the documents and books of the association were seized by the police in October, 1962, and the meeting was informed that the reports would be issued to the members as soon as possible after the books and documents had been returned by the police. It appears from the evidence of Jamit Singh that the notice of the meeting was not sent to each member but that the notices were distributed to the members through the members' representatives in each department, through other members and at the gates of the Singapore Harbour Board.

The plaintiff did not dispute that the police seized some of the documents and papers of the association but that did not take place till October, 1962. No explanation however was given why the reports for 1959, 1960 and 1961 were not prepared.

I find that there had been a flagrant breach of rule 8(b) and rule 8(c) and that breach is *ultra vires* and not *intra vires* as submitted by counsel for the defendants.

The plaintiff also complained that rule 15 was not complied with in that the whole membership of the association was not given an opportunity to vote at the election of the 14th November, 1962, as each member entitled to vote was not issued with a ballot paper together with

an envelope addressed to the general secretary for the return of the ballot.

The relevant provisions are rules 15(a) and 15(d)(i), which are as follows:

15 (a) "Voting shall be by secret ballot *of the whole membership of the Association in* respect of the election of office-bearers."

15 (d) "The Executive Council shall take such steps to see that the following procedures governing secret ballot are complied with:

(i) That each member entitled to vote is issued with a ballot paper together with an envelope addressed to the General Secretary for the return of the ballot."

The defendants admitted that the ballot paper together with the envelope addressed to the general secretary was not sent to each member who was entitled to vote. What took place on the 14th November, 1962, was this. The members were requested to attend at the association's premises and there each member was given a ballot paper and envelope and after marking the ballot paper the member placed it in the envelope and put it in the ballot box.

The intention of rule 15(d)(i) is that each member should be issued with a ballot paper together with an envelope addressed to the general secretary for the return of the ballot. It seems to me that the procedure adopted on the 14th November, 1962, did not give the whole membership of the association an opportunity to vote. There must be many instances where a member was unable to attend at the association's premises for some reason or other which meant that he could not vote. If a ballot paper was sent to him together with the envelope he could have marked the ballot paper, put it in the envelope and posted it or got someone to take it to the secretary and he would thereby have voted. I find that the defendants have contravened the provisions of rule 15(d)(i) and that the failure to observe this rule is *ultra vires* the executive council.

It was submitted by the defendants that the plaintiff could not bring this action as he himself was a party to the *ultra vires* acts of the defendants. In my view the plaintiff certainly was not a party; even if he was a party I do not find that he was knowingly a party.

In the result I make the declarations in term of paragraphs 19(a), 19(b), 19(c) and 19(d) of the statement of claim. I also grant the injunction in terms of paragraph 19(e) of the statement of claim.

The 2nd, 3rd and 4th defendants are to pay the plaintiff's costs to be taxed on the higher scale.

Order accordingly.

Solicitors: *Rodyk & Davidson; T. T. Rajah.*

YEO KUANG CHAI & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Choor Singh J.) March 20, 1964]

[Singapore — Magistrate's Appeal No. 215 of 1963]

Criminal Procedure—Charge under repealed law—Illegality—Maximum sentence Magistrate can impose—No previous conviction—Excess of jurisdiction—Criminal Procedure Code (Cap. 132), s. 12.

Minor Offences Ordinance (Cap. 117)—Charge under s. 24(1)—Repealed by Modification of Laws (Internal Security and Public Order) (Singapore) Order 1963—Conviction set aside.

The appellants were jointly charged with having committed an offence under section 24(1) of the Minor Offences Ordinance on September 30 1963. Both appellants pleaded guilty and were convicted and sentenced to 18 months imprisonment each. On appeal against sentence,

Held: (1) the Magistrate exceeded his jurisdiction. As both appellants had no previous convictions, the maximum sentence that he could impose under section 12 of the Criminal Procedure Code was 12 months' imprisonment each;

(2) as each appellant had a knife on him a separate charge should have been framed against each of them because each of them committed a separate and distinct offence;

(3) as section 24 of the Minor Offence Ordinance was repealed on September 16, 1963 by the Modification of Laws (Internal Security and Public Order) (Singapore) Order, 1963 the charge was clearly illegal and the conviction should be set aside.

MAGISTRATE'S APPEAL.

Appellants in person.

S. R. Chaplchana (Deputy Public Prosecutor) for the respondent.

Choor Singh J.: The abovenamed appellants were charged before a Magistrate's Court on the following charge:—

"You, Yeo Kwang Chai, Tan Joo Phuang are charged that you, on or about the 30th day of September, 1963, at about 12.15 p.m. outside house No. 318, River Valley Road, Singapore, without lawful authority or reasonable excuse, had with you a knife the blade of which is more than 2½ inches long and you have thereby committed an offence punishable under section 24(1) Cap. 117."

Both appellants pleaded guilty, admitted the facts of the case as stated by the prosecuting officer, and were convicted and sentenced to 18 months' imprisonment each. They appealed against the sentence imposed on them by the learned Magistrate on the ground that the sentence was manifestly excessive.

There were three unsatisfactory features in this case. First, the Magistrate clearly exceeded his jurisdiction. As both appellants had no previous convictions, the maximum sentence that the Magistrate could have imposed under section 12 of the Criminal Procedure Code was 12 months' imprisonment.

Secondly, as each of the appellants had a knife on him when they were stopped and searched by the police, each of them committed